IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.729 OF 2006

Khangaram @ Ramesh
Prabhuji Pujari and others ...Applicants

vs.

The State of Maharashtra & Others ...Respondents

Mr.Nitin Sejpal for the Applicant
Ms M.M.Deshmukh, A.P.P. for State.

CORAM: A.S.OKA, J.
LAST DATE OF HEARING THE ARGUMENTS:30TH JUNE 2006
DATE OF PRONOUNCEMENT OF JUDGMENT: 21ST JULY 2006.

JUDGMENT:

1. The earlier bail application filed by the Applicant was rejected by me. Therefore, by an administrative order dated 23rd June 2006 passed by the Hon'ble the Chief Justice, this bail application has been assigned to me.

2. By an order dated 12th July 2005 Criminal Application No.4090 of 2005 made by the present Applicant was rejected by me. While rejecting the Application, I referred to the order dated 4th May 2005 passed by this Court on a bail application made by a co-accused by which the trial was expedited. While rejecting the application I have made following observations in paragraph No.6:

"6. Considering all these aspects of the matter, no case is made out for grant of bail. The application is rejected. As directed by this Court, the learned Trial Judge will ensure expeditious disposal of the

trial by treating it as High Court expedited case. If the trial is not concluded within a period of six months due to any default on the part of the prosecution, the Applicant will be entitled to apply afresh for grant of bail."

2. A Special Leave Petition was filed for challenging the order passed on the earlier bail application. Special Leave Petition was disposed of by the Apex Court by passing the following order :

. " Heard learned Counsel for the parties.

. In view of the observation made in the concluding portion of impugned order rendered by the High Court, learned counsel for the petitioner is permitted to withdraw this special leave petition. The special leave petition is, accordingly, disposed of."

The present Application is filed on 17th February 2006.

3. The learned Counsel for the Applicant submitted that the trial has made no progress at all. He placed reliance on the xerox copy of the Roznama of the trial annexed to the bail application. He submitted that the prosecution intends to examine 80 witnesses and as of today only 10 witnesses have been examined. He submitted that there is no default on the part of the Applicant and only due to negligence on the part of the prosecution that the trial is being delayed. He

submitted that even on merits, there is absolutely no case made out by the prosecution. He submitted that the trial is not likely to be concluded in near future. He submitted that for the offences for which the Applicant is being prosecuted, serious punishment is not prescribed. He submitted that the long delay in trial is itself a change in circumstance which is required to be considered in the second bail application. He submitted that the trial court has not abided by the two orders which are passed by this Court.

4. The learned A.P.P. did not dispute that the prosecution desires to examine total 80 witnesses and as of today only 10 witnesses have been examined. The learned A.P.P. has invited my attention to the Rozanama of the proceedings and submitted that the delay is caused due to adjournments sought by the co-accused. The learned A.P.P. submitted that no case is made out of change in circumstances requiring the consideration of second bail application. The learned A.P.P. submitted that an endeavour will be by the prosecution for early conclusion of trial.

5. In the case of Kalyanchandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another reported in (2004) 7 S.C.C. page 528 (hereinafter referred to as the case of Kalyanchandra Sarkar I) the Apex Court held that the mere fact that the accused has undergone certain period in jail by itself would not entitle the accused to relief of bail nor the fact that the

trial is not likely to be concluded in near future would be sufficient for enlarging the accused on bail, when the gravity of offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period on which he was on bail. In a later decision the Apex Court held that the said decision is rendered in the facts of the case.

6. On 4th May 2005 while rejecting the bail application filed by the co-accused, this Court observed that the trial shall be concluded expeditiously by treating the case as High Court expedited case. Thereafter, by subsequent order passed on 12th July 2005 while rejecting the first bail application filed by the Applicant this Court directed the trial court to ensure expeditious disposal and liberty was granted to the Applicant to apply afresh for grant of bail in case the trial is not concluded due to default on the part of the prosecution.

7. The Roznama of the proceedings is annexed to this application. The Roznama of the proceedings shows that on several dates some of the accused persons were not present and therefore the applications for exemption were made. On 8th July 2005, recording of evidence of P.W.No.1 was started and thereafter cross examination was deferred for one or the another reason. On some dates, cross examination was deferred due to absence of co-accused. On 30th August 2005

cross examination was adjourned as the learned Trial Judge was busy with some other case. on 1st September 2005, matter could not be proceeded as the learned Prosecutor was not present. On 6th September 2005 the learned Trial Judge was absent. On 6th October 2005, the learned Sessions Judge was not present. On various dates, the hearing was adjourned as accused persons either applied for exemption or for cancellation of warrant. On 27th October 2005 the evidence of P.W.No.2 was recorded. On 29th December 2005 recording of evidence of P.W.No.3 was started. As of today it is not disputed that out of 80 witnesses only 10 witnesses have been examined. The question before me is whether a case is made out for grant of bail on the ground of change in circumstances.

8. My attention has been invited to the case of Kalyanchandra Sarkar (I).In paragraph 14 the Apex Court has held as under:

"14...In such cases, in our opinion, the mere fact that the accused has undergone certain period of incarceration (three years in this case) by itself would not entitle the accused to being enlarged on bail, nor the fact that the trial is not likely to be concluded in the near future either by itself or coupled with the period of incarceration would be sufficient for enlarging the appellant on bail when

> the gravity of the offence alleged is severe and there are allegations of tampering with the witnesses by the accused during the period he was on bail."

9. My attention has also been invited to another decision of the Apex Court in case of Kalyanchandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and another reported in 2005 S.C.C. (Cri.) page 489 [hereinafter referred to as Kalyanchandra Sarkar (II)]. While dealing with the case of Kalyanchandra Sarkar (I), the Apex Court in paragraph 41 observed thus :

> "41... This court in Kalyan Chandra Sarkar decided the said case on the facts of that case only, so the question of the said case being overruled in another case does not arise. It is clear from the perusal of Jayendra Saraswathi case as well as Kalyan Chandra Sarkar that both the cases have been decided by this Court on their individual facts only."

10. Coming to the peculiar facts of the present case, it is obvious that the orders passed by this Court directing the expeditious conclusion of the trial are not yet given effect. In paragraph No. 10 of the Affidavit-in-reply filed by the Investigating Officer, it is stated as under :

> 10. I say and submit that the trial of the case is at crucial case. I say that if present Applicant

released on bail it is high possibility that he may tamper and absconded and may not be available for the trial which is in progress. I say that I am filing this affidavit to oppose the present Criminal Application and bail to present applicant who is member of international Fake Currency racket, who commissioned present crime in organized manner to destabilize the Indian Economy."

11. Considering the peculiar facts of the case, at this stage, no case is made out for enlarging the Applicant on bail only on the ground that the trial will not be concluded in reasonable time. Though the trial may not have been delayed due to fault on the part of the Applicant, it cannot be said that there is negligence on the part of the prosecution. Delay has been occasioned as some of the accused were absent and applications were made for exemption. In my view, prosecution deserves to be given one more opportunity to ensure that the trial is concluded within a reasonable time. The State has stated that the trial will be concluded within a period of 4 to 5 months.

12. Hence, I pass the following order :

i) Application is rejected. Trial court is directed to conclude the trial as expeditiously as possible and preferably on or before 23rd February 2007. If the trial is

not concluded due to any reason before the said date, the Applicant will be at liberty to apply for grant of bail before the appropriate Sessions Court.

Judge.